

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF THE CITY OF DURHAM, NORTH CAROLINA

These Comments are filed by the City of Durham, North Carolina in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Durham, North Carolina believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community

Cable Franchising in Durham, NC

Community Information

The City of Durham, North Carolina is city with a population of approximately 208,000. Our franchised cable provider(s) is Time Warner Advance/Newhouse Partnership.

Our Current Franchise

Our current franchise began more than 10 years ago and expires on October 31, 2007. We are currently operating under a two (2) year extension of our expired franchise.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public and governmental access (a shared channel); and 1 channel devoted to educational access. We are seeking a separate governmental access channel, but negotiations have been difficult due to the fact that local governments have very little leverage in the negotiating process.

Our franchisee supports the shared public and governmental access channel by operating (including minimal staffing) the channel. We are proposing in our new franchise that operational responsibilities for public access be transferred to a private nonprofit, and that all responsibilities for governmental access be transferred to the city. We are also proposing that the franchisee upgrade all public access equipment to a digital format to be consistent with industry practices and FCC mandates. We are also proposing in our draft Cable Regulatory Ordinance that any video service franchise simulcast all PEG access channels.

Our franchise requires emergency alert access. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. Amber alerts and nuclear plant alerts are important to our community.

Our franchise contains customer service obligations which help ensure that the cable operator is treating our residents in accordance with federal standards. These include customer notification, a local business office, complaint procedures and the like.

Our original franchise contained a reasonable build schedule for the cable operator, and our draft franchise renewal requires all areas in the city limits to be served.

In order to ensure that our residents have access to current telecommunications technologies, our original franchise required "state of the art" construction. Cable modem service is available community-wide.

Our draft franchise renewal contains a "level playing field" provision to ensure the current provider and all future competitors are treated fairly.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider must provide notice, but is not required to obtain a permit before it may access the public rights of way.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be subject to current law as amended from time to time.

Competitive Cable Systems

- Durham was approached once about five (5) years ago by an “overbuilder,” but the provider did not successfully enter our market due to a lack of capital.
- Durham has not denied any provider the opportunity to serve in our community.
- No former Bell operating company has approached us about providing video services.
- Durham does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request. In fact, we have anticipated the desire of telephone companies to get into the video service market by drafting a separate regulatory ordinance that provides uniform regulations for all video service providers. In this way, a much shorter negotiation process can handle the specific franchise requirements such as the build out schedule.
- In North Carolina, telcos have spent hundreds of hours using dozens of professional lobbyists in the General Assembly to avoid having to serve community needs through the existing franchise process. This is very disturbing to our community, particularly in light of the “cherry picking” strategy outlined in SBC Communications FCC filing. Local franchising requirements are not a barrier to entry in Durham, NC.

Conclusions

The local cable franchising process functions well in the City of Durham, North Carolina. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Durham, North Carolina therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

the City of Durham, North Carolina



By: Theodore L. Voorhees
Assistant City Manager

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov